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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,459	02/27/2002	Kenneth Robert Mohny	01-4946	1827

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EXAMINER

VANATTA, AMY B

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 02/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/085,459

Applicant(s)

MOHNEY, KENNETH ROBERT

Examiner

Amy B. Vanatta

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 4-8, 11 and 15-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 9, 10 and 12-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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DETAILED ACTION

Election/Restriction

1. This application contains claims 4-8, 11, and 15-21 drawn to an invention nonelected with traverse in Paper No. 4. A complete reply to the final rejection must include cancellation of nonelected claims (unless are species claims depending from allowable generic claim) or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2, 3, 9, 10, 12, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Moyer (US 4,014,045).

Moyer discloses an apron which forms a hang line towel. Moyer teaches that the apron may be made out of fabric such as denim, such fabric being absorbent and thus forming a "towel" to the extent claimed. The apron includes a body portion 12 which

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forms a uniformly planar towel as claimed, and includes a hang line 34 attached to the top edge of the towel. The hang line 34 has ends positioned closely to form a hang loop intermediate the first and second attachment portions as claimed. The first attachment portion (33d) is proximate a first top corner and the second attachment portion (33c) is a predetermined distance towards the second top corner as claimed. The hang loop encircles the wearer's neck as in claims 1 and 2. The towel 12 extends predeterminedly down from the towel hang portion and extends from a first side of the individual which is below the first top corner of the towel to a second side of the individual as claimed (see Fig. 1). The towel 12 has a bottom edge which is unattached (see bottom edge 16 which is free of attachment means or fasteners) allowing the towel to hang freely as claimed. The towel (specifically lower section 14) can be moved upwardly to wipe the individual's torso as claimed.

The towel extends past the wearer's waist (Fig. 1), thus extending "to proximate a mid section" of the torso as in claim 3. The towel includes a pocket 46 as in claim 10. The pocket forms a "valuables container" as in claim 9, and swings so that the valuables are retained thereon and do not fall out when the wearer bends over. The towel includes a hook fastener (hook portion of mating fasteners 48,39; col. 3, line 22), the hook fastener attaching the pocket 50 to the towel and thus being articulated to fasten items to the towel (i.e. items that are in the pocket). Although Moyer does not disclose what items are carried in the pocket and does not disclose carrying a key or ring in the pocket, such a recitation in claim 12 amounts to the intended use of the pocket and the claim does not specifically claim the key and ring as being in the pocket, i.e. the claim

recites that the fastener is used to fasten items to the towel. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Regarding claim 13, the attachment of the hang line to the towel is tension releasable with at least one pressure-release fastener (33b, 35b; col. 2, lines 54-59).

4. Claims 1, 2, 3, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Furgang (US 4,669,128).

Furgang discloses a hang line towel including a uniformly planar towel 10 and a hang line 20 attached to the top edge of the towel (see Fig. 1 or Fig. 5). The hang line 20 has ends positioned closely to form a hang loop intermediate the first and second attachment portions as claimed. The first attachment portion (at 23 or 48) is proximate a first top corner and the second attachment portion (at 22 or 46) is a predetermined distance towards the second top corner as claimed. The hang loop encircles the wearer's neck as in claims 1 and 2. The towel 10 extends predeterminedly down from the towel hang portion and extends from a first side of the individual which is below the first top corner of the towel to a second side of the individual as claimed (see Fig. 3). The towel has a bottom edge which is unattached (see bottom edge 54 which is free of attachment), allowing the towel to hang freely as claimed. The towel can be moved upwardly to wipe the individual's torso as claimed. The towel extends to proximate a

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mid section of the torso as in claim 3 (see Figs. 3-4). The hang line 20 is disclosed as a string (col. 2, line 52) as in claim 14.

5. Claims 1, 2, 3, 13 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Griffin et al (US 6,505,367).

Griffin et al disclose a hang line towel including a uniformly planar towel 10 and a hang line 14 attached to the top edge of the towel. The hang line 14 has ends positioned closely to form a hang loop intermediate the first and second attachment portions as claimed. The first attachment portion (30) is proximate a first top corner and the second attachment portion (28) is a predetermined distance towards the second top corner as claimed. The hang loop encircles the wearer's neck as in claims 1 and 2. The towel 10 extends predeterminedly down from the towel hang portion and extends from a first side of the individual which is below the first top corner of the towel to a second side of the individual as claimed (see Fig. 2). The towel has a bottom edge 18 which is unattached as shown in Fig. 2, allowing the towel to hang freely as claimed. The towel can be moved upwardly to wipe the individual's torso as claimed. See Fig. 3, which clearly shows the towel being moved upwardly and col. 5, lines 2-3, which disclose that the bottom edge is pulled upwardly toward the top edge. Although the reason for moving the towel upwardly is different in Griffin than in claim 1 (i.e. Griffin moves the towel upwardly in order to wipe an infant rather than to wipe the wearer), such a recitation amounts to the intended use of the device and does not further define the claimed structure over that of Griffin.

The towel extends to proximate a mid section of the torso as in claim 3 (see Fig. 2). The hang line may be attached at one end with a releasable fastener which is a pressure-release fastener forming a tension releasable attachment as in claim 13 (col. 4, lines 43-49). Griffin teaches that the hang line 20 may be made out of soft, flexible material such as woven textiles (col. 4, lines 21-23), thus material being a "cloth fabric" as in claim 14.

6. Claims 1, 2, 3, 9, 10, and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Frye (US 6,334,220).

Frye discloses a garment protector which forms a hang line towel. Frye discloses that the protector may comprise an absorbent towel (col. 3, lines 15-16 and col. 4, lines 49-50) and includes a hang line 12. The hang line (support 12) is attached to the top edge of the towel and has ends positioned closely as a hang loop intermediate the first and second attachment portions as claimed (see Fig. 1). The first attachment portion is proximate a first top corner (see upper left of bib portion) and the second attachment portion is a predetermined distance (i.e. the width of the bib portion) towards the second top corner as claimed. The hang loop encircles the wearer's neck as in claims 1 and 2. The towel extends predeterminedly down from the towel hang portion and extends from a first side of the individual which is below the first top corner of the towel to a second side of the individual as claimed. The towel has a bottom edge which is unattached, allowing the towel to hang freely as claimed. The towel can be

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moved upwardly to wipe the individual's torso as claimed. The towel is comprised of a uniformly planar sheet 48 (see Fig. 2), as claimed.

Frye discloses that the device covers the stomach of the user (col. 3, lines 13-15), thus extending to proximate a mid section of the torso as in claim 3. The towel includes a pocket 34 as in claim 10. The pocket forms a "valuables container" as in claim 9, and has adhesive 36 thereon to hold the pocket closed to retain items therein. Regarding claim 13, the attachment of the hang line is tension releasable by tearing one of perforations 14, 62 and includes at least one pressure release fastener (the perforations or the adhesive 18,64). Alternatively, the embodiments of Figs. 4-5 show that the hang line is attached to the towel in such a manner that the attachment includes a pressure release fastener such as Velcro or snaps (60).

Response to Arguments

7. Applicant's arguments filed 11/24/02 have been fully considered but they are not persuasive.

Regarding Moyer, applicant argues that the apron of Moyer has a waistband that secures the apron around the torso rather than hanging freely. The Examiner contends that the structure of Moyer meets claim 1 as amended. The waistband of Moyer does not prevent the apron from being lifted up by grasping its bottom edge and pulling upward. Such a motion would allow the apron section 14 to be used to wipe the wearer. The apron of Moyer is hanging freely since its bottom edge 16 is unattached, to the extent recited in claim 1.

Regarding Furgang, applicant argues that the garment of Furgang has a fastener at the bottom to form a robe which wraps completely around the wearer. The Examiner contends that the structure of Furgang meets claim 1 as amended. Although there is a fastener 26,28 (Fig. 1) which attaches the two side edges of the apron to one another at the bottom of the apron (see Fig. 4), the bottom edge itself remains unattached, as recited in claim 1; i.e. the bottom edge is free of attachment to the wearer or the underlying clothing. Thus, the garment of Furgang has an “unattached bottom edge” as claimed. Although the apron is wrapped into a cylinder shape, the apron is still “hanging freely” to the extent claimed and can be moved upwards for wiping as claimed. The robe can be moved upwards in the same manner that a skirt or dress can be pulled upwards, even though it is in the form of a closed loop around the wearer’s legs.

Regarding Griffin, applicant argues that the device of Griffin has a fastener at the bottom edge to attach it to the top edge. The Examiner contends that the structure of Griffin meets claim 1 as amended. Figure 2 clearly shows that the apron, before being pulled upwardly, meets the claimed structure since the bottom edge in Fig. 2 is unattached, allowing it to be pulled upwardly. After the bottom edge is pulled upwardly (see Fig. 3), it is attached to the top fastener 22, however the structure recited in claim 1 is still met by Griffin. As shown in Fig. 2, the towel hangs freely as claimed. In col. 5, lines 2-3, Griffin discloses that the bottom edge is pulled upwardly toward the top edge. Although the reason for moving the towel upwardly is different in Griffin than in claim 1 (i.e. Griffin moves the towel upwardly in order to wipe an infant rather than to wipe the

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wearer), such a recitation amounts to the intended use of the device and does not further define the claimed structure over that of Griffin.

Regarding Frye, applicant argues that the device of Frye has a pouch at the bottom and thus is not uniformly planar. The Examiner contends that the structure of Frye does meet claim 1. The device of Frye comprises a main body portion (e.g.48) which is uniformly planar as claimed. Although the planar main body portion has a pouch attached thereto, that does not negate that fact that the main portion of the device is a uniformly planar sheet. The pouch can be regarded as an additional separate structure, provided in addition to the structure which meets claim 1. Thus, Frye discloses the invention as claimed since it does include a portion which forms a uniformly planar towel portion having a hang line at the top, and the fact that it discloses additional structure (i.e. a non-planar pouch portion) is irrelevant since the claimed structure is disclosed.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

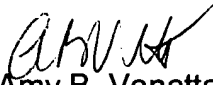
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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy B. Vanatta whose telephone number is (703) 308-2939. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Amy B. Vanatta
Primary Examiner
Art Unit 3765

February 2, 2004